

1           A     No, it had nothing to do with the Reading case.

2           Q     And do you recall when you and I first started  
3 discussing that proceeding?

4           A     I filed that petition for modification of the FM  
5 table in October of '99. I don't know when we first started  
6 discussing it. It was late getting, I mean, it went on  
7 forever -- no, I'm sorry, we filed the petition in the  
8 spring of '99 and we filed the initial comments in October  
9 of '99. Maybe it was filed in May of '99.

10          Q     The Commission's records will reflect that it's  
11 the Boulder City --

12          A     Boulder City, Nevada.

13          Q     The Nevada case. The Boulder City, Nevada case.  
14 And do you recall that you and I had multiple conversations  
15 during the period of April-May 1999 leading up to the  
16 submission of the petition for rulemaking in the Boulder  
17 City case?

18          A     Right. You represented a consultant on the case.

19          Q     Now, let me refer you please to Number 53 from the  
20 black folder, which is your daytimer for April 30th, 1999.  
21 Do you see that? Page two of Reading Exhibit Number 53.

22          A     Um-hum.

23          Q     And there's the entry about which you testified in  
24 response to questions from Mr. Southard concerning the item  
25 listed at 10:54 to 11:18, Cole. See that? Do you have any

1 way of knowing whether that reference indicates a telephone  
2 conversation with me about Reading or the Boulder City case?

3 A From what's here, I can't say one way or the  
4 other, but I can say, in being careful in doing this, there  
5 were a number of times that said Centennial, the other  
6 client, and a number of times it said Telemundo. And I  
7 tried to redact accordingly.

8 Q But this item as it stands here has neither  
9 Telemundo nor --

10 A It just says "Cole."

11 Q Now, from your testimony today and the documents  
12 about which you've been examined, is it accurate to say that  
13 prior to April 29, 1999, there had been no communications at  
14 all between Adams Communications Corporation and Telemundo  
15 concerning the rating proceeding, to the best of your  
16 knowledge?

17 A It's either April 28th or 29th, but before that --

18 Q April 28th is fine. That was not, so that would  
19 be correct as of April 28th.

20 A That would be correct.

21 Q And it's true, isn't it, that as of April 28th,  
22 you had no reason to believe that Adams would be interested  
23 in any settlement and, well, let me just ask you that.  
24 Would you agree with that statement?

25 A April 28th of '99?

1 Q Yes.

2 A I have no knowledge of whether they were  
3 interested before that.

4 Q Let me refer you to Exhibit Number 52, page one.

5 A I'm on Exhibit 52, page one.

6 Q And I believe you testified -- excuse me, Your  
7 Honor, I'm trying to make my way through the -- that the  
8 line entry about eight lines down, it says, "Tried to get  
9 number from Cole. No success."

10 A I see that line.

11 Q Did that give you any indication that Adams had  
12 previously expressed any interest in any settlement?

13 A I think that's Howard Topel telling me that  
14 Reading Broadcasting had tried to get Adams to do something  
15 on a settlement and there had been no success.

16 Q So isn't it accurate that, acting on behalf of  
17 Telemundo, you on or about April 30th, initiated  
18 communications with Adams, first by contacting me as counsel  
19 for Adams?

20 A Can I look at my notes on this?

21 Q Sure. Oh, absolutely. Please. Please.

22 A I don't have any independent recollection at all.  
23 I mean I believe, looking at Reading Exhibit 52, the bottom  
24 of page four, that I was the one calling you at that point,  
25 after having talked with Anne Gaulke and Howard Topel, that

1 I called you to explore the concept of settlement.

2 Q And your notes indicate -- and again, feel free to  
3 refer to them -- I believe page five of Exhibit 52 is one  
4 place you may refer, and also page, I'm sorry, Exhibit 50,  
5 which is your billing records, page three -- if you look at  
6 the billing records and the notes together, as you've been  
7 doing all afternoon, would you agree with me that you spoke  
8 with Mr. Gilbert for the first time on April 30th, 1999?

9 A Looking at Exhibit 50, page three, the entry for  
10 April 30th, and Exhibit 52, page five, I believe those two  
11 go together, my notes at the bottom about talking to Howard  
12 Gilbert and the entry on April 30th that I spoke with an  
13 Adams principal. And that would be the first time I spoke  
14 with Howard Gilbert.

15 Q Now, am I correct that the next time you spoke  
16 with Mr. Gilbert was on June 7? And again, feel free to  
17 refer to Exhibit 50, which is your billing records. The  
18 June 7 entry appears on page seven of Exhibit 50, but if you  
19 want to look at the entries between --

20 A Yeah, I had to go through them, and I remember,  
21 based on, well, in reviewing for this, I realized I'd spoken  
22 to him, I believe, three times, but the dates I didn't  
23 memorize.

24 Q The second date that I see is June 7, and I just  
25 want you to confirm that that was --

1           A     It's June 7 in my notes, which was Exhibit 52,  
2     page 10, and as I go through the billing records, Exhibit  
3     50, page seven, June 7th, I talked with Howard Gilbert.

4           Q     Do you recall speaking with Mr. Gilbert at all  
5     between April 30th and June 7, 1999?

6           A     No, I don't recall doing that.

7           Q     During the June 7 conversation, am I correct to  
8     understand your notes on page 11 of Exhibit 52 that Mr.  
9     Gilbert expressed no sense, no great sense of urgency about  
10    settling?

11          A     I think you're referring to Exhibit 52, page 11,  
12    the top two lines --

13          Q     That's correct.

14          A     Where I believe Mr. Gilbert is telling me it takes  
15    three people or three parties to make a settlement happen  
16    and he doesn't see great urgency.

17          Q     And you'd agree with me, wouldn't you, you have  
18    been shown no documentary evidence this afternoon which  
19    indicates that during the June 7 conversation with Mr.  
20    Gilbert proposed any settlement terms to you? Wouldn't you  
21    agree with that?

22          A     Yeah, I agree that I haven't heard settlement  
23    terms from Adams at all.

24          Q     Now again, following up, your notes indicate, I  
25    believe, that on July 15, you spoke again with Mr. Gilbert,

1 and that I refer you to page --

2 A May I look at my notes?

3 Q Sure. That's Exhibit 52, page 14 for your notes,  
4 and Exhibit 50, page 10 for your billing records.

5 A The only question I have is I know, from Exhibit  
6 52, page 14, I spoke to Howard Gilbert on July 15. I can't  
7 tell from Exhibit 52, page 12 whether I talked to him on the  
8 14th of July or not. I'm just not positive. But those  
9 were, I mean --

10 Q Well, why don't you, if you could please, refer to  
11 Exhibit 50, the billing records.

12 A If I talked to him on July 14th, it must have been  
13 brief, because there's not much in my notes, and my time  
14 records on Exhibit 50, page 10 don't show a conversation  
15 with him on July 14th. They do show a conversation with him  
16 on July 15th.

17 Q And do you conclude from your review of these  
18 documents that you did not speak with Mr. Gilbert on July  
19 14th but you did speak with him on July 15? Or are you  
20 still not sure?

21 A I'm sorry, I can't be positive.

22 Q And it's true, isn't it, that you haven't had any  
23 further conversations with Mr. Gilbert since July 15?

24 A I believe that's, let me just go through the rest  
25 of the notes, I believe that's, no, it's the last time I

1     talked with him. It was an idea that went nowhere, and idea  
2     of mine that went nowhere.

3           Q     Ms. Swanson, earlier on in response to a number of  
4     questions from Mr. Southard, you mentioned discussions  
5     between Telemundo and Reading Broadcasting, Inc., concerning  
6     amendment of an option agreement. Do you recall that  
7     testimony?

8           A     I think I referred to amendment of an option  
9     revision Telemundo affiliation --

10          Q     An option -- I stand corrected. That's absolutely  
11     correct.

12                  MR. COLE: And Your Honor, in the course of  
13     Reading's discovery, the production of documents from Dow,  
14     Lohnes, a document did surface which appears to related to  
15     that, and I would like to show it to the witness.

16                  MR. HAYS: Can I see a copy of it?

17                  MR. COLE: Absolutely. And I offer this, I would  
18     like to have the witness -- well, let me identify the  
19     document. It's a three-page document. The first page is a  
20     fax cover sheet from Telemundo Group Affiliate Relations  
21     from Ann Gaulke to Kevin Reed at Dow, Lohnes & Albertson,  
22     and the next two pages appear to be a letter on Reading  
23     Broadcasting, Inc. letterhead, signed on the second page by  
24     Frank D. McCracken, executive vice president. And Mr.  
25     McCracken's letter is addressed Ms. Gaulke.

1 THE COURT: Is this going to be offered as an  
2 Adams Exhibit?

3 MR. COLE: Yes.

4 THE COURT: Number 88? Is that right?

5 MR. COLE: Yes. 88. Yes. And I'd like to have  
6 it identified as Adams 88 please.

7 THE COURT: The reporter will so identify this  
8 document as Adams Exhibit Number 88 for identification.

9 (The document referred to was  
10 marked for identification as  
11 Adams Exhibit No. 88.)

12 BY MR. COLE:

13 Q And Ms. Swanson --

14 A Do you want me to read it?

15 Q Yes, if you could.

16 MR. COLE: Your Honor? If I may?

17 THE COURT: Sure.

18 MR. SOUTHARD: This, again, I'm not sure exactly  
19 where Mr. Cole is going to end up going with this, but it  
20 appears to be beyond the scope of our direct examination.

21 THE COURT: Well, let see. We can argue that when  
22 he moves it in.

23 MR. COLE: Your Honor, just as an aside, I believe  
24 I explained early on in my presentation of this document  
25 that Ms. Swanson had given repeated testimony about



1 circumstances involving Telemundo and Reading Broadcasting,  
2 which may have influenced her interpretation of these notes.  
3 That is, that she couldn't understand, she couldn't  
4 determine whether certain conversations involved the Reading  
5 Broadcasting proceeding or an effort by Reading Broadcasting  
6 to revise an option provision in the affiliation agreement.

7 THE COURT: Well, her testimony will speak for  
8 itself. I do have the recollection of certain aspects of  
9 the testimony. Not throughout her testimony.

10 MR. COLE: No, no, not throughout. But there are  
11 certain elements of it that the question arose at more than  
12 one point in her testimony, and it seemed to me that this  
13 document, which I believe, well let me ask --

14 THE COURT: Go ahead.

15 BY MR. COLE:

16 Q Ms. Swanson, do you, have you reviewed this?

17 A I've reviewed it.

18 Q Are you familiar with the information set forth in  
19 this letter concerning the option provision of the Telemundo  
20 affiliation agreement with Reading Broadcasting?

21 MR. SOUTHARD: Objection. Goes beyond the scope  
22 of the direct. I'd also note that the fax cover sheet here  
23 is dated April 8, and the letter is dated March 26th, and  
24 we've got ample testimony that there wasn't anything  
25 concerning settlement discussions prior to April 28th.

1           THE COURT: Well, I'm going to overrule the  
2           objection because of the reasons that Mr. Cole has given.  
3           In fairness to the witness, there are discrete portions of  
4           her testimony where she brought this affiliation agreement  
5           or this question of the affiliation agreement in the context  
6           of her trying to reconstruct her recollections so, if  
7           nothing else, for purposes of rounding out the record. In  
8           other words, even just for background purposes, I would  
9           allow this to come in. In terms of its relevance to the  
10          settlement issue, it remains to be seen.

11          MR. COLE: That's all I'm looking for Your Honor  
12          is just to have the record reflect, you know, information  
13          which will kind of bolster, or not bolster, but provide  
14          background for what Ms. Swanson has testified to.

15          THE COURT: All right. Okay. So this is a letter  
16          dated March 26th. Are you moving it into evidence?

17          MR. COLE: Yes I am, Your Honor.

18          THE COURT: And I know that Reading objects to it.  
19          How about the bureau?

20          MR. SHOOK: Your Honor, I would object to it for  
21          different reasons. I don't see how this witness can  
22          authenticate even the fax cover sheet. Her name doesn't  
23          appear on this, and there's no indication that she had  
24          anything to do with this. And likewise, the letter, there's  
25          just nothing here that ties this letter directly to Ms.

1 Swanson.

2 MR. SOUTHARD: Your Honor, we would join with that  
3 objection.

4 MR. SHOOK: I mean, in one respect, I sympathize  
5 with Mr. Cole in his desire to get this information into the  
6 record, but by the same token, I'm constrained to point out  
7 that it shouldn't be done through this witness.

8 MR. COLE: Well, Your Honor, with all due respect  
9 to everyone on the other side, I was starting to lay the  
10 foundation with Ms. Swanson. When Mr. Southard objected and  
11 then we leapt ahead from that into offering it into  
12 evidence.

13 MR. COLE: If I may be permitted a couple of  
14 questions of Ms. Swanson.

15 THE COURT: I was pushing it. Go ahead.

16 BY MR. COLE:

17 Q Ms. Swanson, are you familiar with the situation  
18 described in Mr. McCracken's letter to Ms. Gaulke in this  
19 exhibit.

20 A Yeah. I recall reviewing this letter.

21 Q And is this -- strike that -- is the option  
22 provision in the Telemundo affiliation agreement, which is  
23 referenced in Mr. McCracken's letter the same matter about  
24 which you testified earlier on in response to questions from  
25 Mr. Southard?

1           A     Yes it is.

2           MR. COLE: Your Honor, on that basis, I offer this  
3 letter into evidence.

4           THE COURT: All right. I know that Mr. Southard  
5 still has his objection. Are you still objecting, Mr.  
6 Shook?

7           MR. SHOOK: Yes, Your Honor.

8           THE COURT: All right. It's a business record.  
9 It was certainly produced in response, well it's a business  
10 record. It's part of the files of Dow, Lohnes that was  
11 turned over with a subpoena as a responsive document, and it  
12 certainly has all the trappings of reliability in that  
13 respect, and in terms of its utility in this case, I've  
14 already indicated how I view it since this witness has  
15 gotten into this area. And I think that it's important for  
16 purposes of the witness that this come in, so I'm going to  
17 receive it into evidence. It's more in the context of  
18 background than it is anything else.

19           MR. COLE: Thank you, Your Honor.

20                               (The document referred to,  
21                               having been previously marked  
22                               for identification as Adams  
23                               Exhibit No. 88 was received in  
24                               evidence.)

25           BY MR. COLE:

1 Q And I have, hold on --

2 MR. SOUTHARD: Your Honor, I'm sorry. Just by way  
3 of clarification, it's admitted solely for the limited  
4 purpose of this witness's testimony concerning her earlier  
5 testimony.

6 THE COURT: Only in those very discrete areas  
7 where she testified to this subject in the context of trying  
8 to reconstruct something from the notes. Not too many  
9 places.

10 MR. SOUTHARD: Very good, Your Honor. Thank you.

11 MR. COLE: Your Honor, I have no further  
12 questions.

13 THE COURT: Anything from the bureau?

14 MR. SHOOK: No, Your Honor.

15 THE COURT: Surprise, surprise. All right. I  
16 have nothing. This witness is excused. There is going to  
17 -- oh yes, something is going to get done with that letter,  
18 the reference, the identification. You know what I'm  
19 talking about. There's a letter in there that there's going  
20 to be a change to. And that's going to be substituted.

21 MR. COLE: That's a Reading Exhibit.

22 THE COURT: That's a Reading Exhibit. That's  
23 right. They're going to take care of that, but you're going  
24 to work, they're going to be working in conjunction with  
25 you, aren't they?

1 MR. COLE: Absolutely.

2 THE COURT: Now there are three or four document  
3 in here where I've said that I'm not even going to entertain  
4 them as even identified. And that was really at Mr.  
5 Southard's insistence. Is there anything in those letters  
6 that would prompt a concern for Telemundo. Do you want them  
7 out of the record? We could substitute a blank page or  
8 something saying they were drawn.

9 THE WITNESS: Can I see them?

10 MR. HAYS: Yes. Which exhibits are we referring  
11 to here, Your Honor.

12 THE COURT: Okay. Let's look at the numbers. Let  
13 me tell you what I have. I have 61 -- actually

14 THE COURT: That's your option. All I'm going to  
15 do is require, then, that blank pages be prepared signed by  
16 counsel indicating that there is no exhibit 56, and the same  
17 with respect to 65, 66, and 69. And we'll just substitute  
18 those pages and then you can pull out the --

19 MR. COLE: And I think 61, Your Honor.

20 MR. COLE: 61, as well, Your Honor.

21 THE COURT: 61. That's correct. 56, 61, 65 and  
22 66 and 69.

23 MR. COLE: I've got 64 as well.

24 THE COURT: And you've got 64 as well.

25 MR. SOUTHARD: I'm sorry, Your Honor. Could you

1 go through those again?

2 THE COURT: Right. We'll back into this. 69 is  
3 one. 66 is one. 65 is another. 64, 64 was identified. If  
4 it was identified I'm going to allow it to stay in. 61 was  
5 also identified. There was some discussion as to what the  
6 document was and why it wasn't coming in. And 56 was  
7 identified. So I'm going to allow the ones that were  
8 officially identified to stay in the record, but 65, 66 and  
9 69, those will be extracted and a blank sheet put in  
10 indicating that there is no such exhibit, that's signed by  
11 counsel.

12 MR. COLE: Your Honor, when you say you'll allow  
13 them to stay in the record, you mean you'll allow them to  
14 stay in the notebooks, but if they haven't been received --

15 THE COURT: If they're not in evidence, and  
16 they're not in the evidentiary record but they're in the  
17 notebook. Yes sir. I'm going to say once more, before Ms.  
18 Swanson and Mr. Hays leave that, first of all, I think the  
19 firm of Dow, Lohnes can be very much commended in terms of  
20 the hoops that they were put through to put all these  
21 materials together and to get them over to counsel and  
22 having me looking at them in a very short period of time.  
23 And the reason it was a short period of time is because I'm  
24 convinced, I know, that Reading failed to move in a prompt  
25 fashion with respect to its discussed on this issue, this

1 phase ii, what are we into, this phase III issue, which you  
2 knew about since January.

3 You certainly knew about the participation of Ms.  
4 Swanson since January. So I am really very much concerned  
5 about that, and I am continuing to take a very hard look at  
6 their motion, and I would urge, I think in light of all of  
7 this, that you would take advantage of this opportunity and  
8 this period of time to speak with Dow, Lohnes about this  
9 subject and try to get something resolved. Because I'm very  
10 serious about it. And there's a reason why I'm serious  
11 about it.

12 MR. HUTTON: Your Honor, I'd like to speak to  
13 that.

14 THE COURT: Okay.

15 MR. HUTTON: Number one, I was trying to follow an  
16 orderly process in discovery of getting the foundation laid  
17 of documents in from Adams Communications and then follow  
18 that up with discovery efforts from other people involved in  
19 this matter. I think that's similar to the pattern that  
20 Adams was afforded in litigating the issue against us. And  
21 I apologize, but, you know, phase III, we were put in a very  
22 tight time frame because of the change in the schedule,  
23 which you will recall.

24 THE COURT: At your request.

25 MR. HUTTON: It was a very optimistic schedule,



1 and as it turned out, we weren't able to meet that schedule.  
2 But I do think it's a mischaracterization to say that we  
3 were dilatory, because I was trying to follow a pattern of  
4 getting documents and evidence from Adams first and then  
5 proceeding basically with that evidence against other  
6 parties.

7 And then secondly, I think it's important to note  
8 that Telemundo, in their motion, has sought partial recovery  
9 of expenses that they have incurred in the federal  
10 litigation. And I think that's totally inappropriate.

11 MR. HAYS: I don't think that's -- that  
12 mischaracterizes our motion. I think our motion speaks for  
13 itself, Your Honor. We cut in half any fees that were even  
14 remotely related to producing documents for both  
15 proceedings, so that we only charged for, so we only charged  
16 half freight, as it were, for the documents that were  
17 relating to both proceedings, and it's reasonable to  
18 allocate it at least on a 50/50 basis. And much of the work  
19 that we're going to be submitting a new set of costs and  
20 expenses for were done in the last week of 10 days, and they  
21 were done solely for this proceeding.

22 I mean Ms. Swanson has jumped, I must say, through  
23 incredible hoops, has spent long, many, many late nights,  
24 many weekends, in addition to her very busy other matters  
25 that she had doing and, you know, really a remarkable show

1 of endurance, in nothing else, to be able to accomplish what  
2 she's accomplished and review all this stuff. And having  
3 gone through this hearing, and in light of Mr. Shook's  
4 comments, I must say that this was, you know, these were  
5 things that were insisted upon by Reading. And at the end  
6 of the day, they have marginal, if any, probative value with  
7 respect to this. I think it is apparent to everybody at  
8 this point in time.

9 And we've expended over, our client has expended  
10 probably at this point, I would suspect, close to over  
11 \$30,000 on this. And so I think, between an innocent  
12 nonparty who has been forced to go through these extreme  
13 measures to produce this stuff, who has no stake in this  
14 matter, and Reading, who is the party that insisted upon it,  
15 it seems that, it seems to me fair and equitable that  
16 Reading should be forced to pay for this.

17 MR. HUTTON: Your Honor, I'd like to speak to that  
18 last point.

19 THE COURT: Go ahead.

20 MR. HUTTON: They have repeatedly claimed nonparty  
21 status and acted as if they're an innocent bystander. Well,  
22 Telemundo injected itself into this proceeding. They  
23 decided to try to act as a broker or a negotiator of a  
24 settlement, and that's how they came to be involved in this  
25 issue. So their claim of innocent bystander status just

1 doesn't wash. They made the decision to get involved, and  
2 they have to live with the consequences, in my view.

3 MR. HAYS: Well, I can see in my own mind, Your  
4 Honor, a distinction between somebody who is trying to put  
5 together a white knight settlement some five years  
6 afterwards and somebody who's participating in greenmail. I  
7 mean, perhaps Mr. Hutton doesn't see that distinction, but I  
8 think it's a pretty apparent distinction. What we were  
9 doing is the same thing basically that Mr. Shook -- not to  
10 put Mr. Shook on the line here as a potential defendant, as  
11 well, or a potential --

12 MR. HUTTON: Your Honor, at this, we should not be  
13 on the record about any settlement discussion.

14 THE COURT: Well, that's, I'm not going to get  
15 into that at all. I'm here on, this is a very narrow issue.  
16 It's a gut issue on litigation, and that is moving promptly  
17 on these kinds of issues. And I am not at all critical in  
18 terms of how Reading proceeded with the evidence once you  
19 got the evidence, but I think that, I'm just saying that I  
20 think that Dow Lohnes has a point. The amount of the point  
21 is something else again, but I think they have a darn good  
22 point, and if you read that rule, that rule does not  
23 equivocate.

24 MR. HUTTON: Well, Your Honor, if they were going  
25 to incur the expenses, it wouldn't matter how much time they

1 had to comply with discovery requests, so I think that's a  
2 nonissue in terms of --

3 THE COURT: It's a nonissue, it would be a  
4 nonissue if you had started back when you were supposed to  
5 have started, but when you become dilatory and there's an  
6 extra burden put on the client -- I'm sorry -- on the  
7 nonparty to have to do what they had to do to get ready so  
8 that you could be ready for your hearing, I think it's a  
9 horse of different color.

10 MR. HUTTON: It didn't add anything to their  
11 expense.

12 THE COURT: It's not the question of -- you know,  
13 I think you're missing the point here. It's not a question  
14 of how much the effort cost them. The question is whether  
15 or not my discretion should be exercised in terms of  
16 imposing something like a cost. That's what this is all  
17 about. It's not about the amount. The amount, as I say, is  
18 always negotiable.

19 And I'm not saying that I'm going to set an order  
20 down giving or requiring a payment of every Lincoln penny  
21 that they incurred. But I'm saying that there's a  
22 substantial issue here, and I think it should be cited and  
23 you should sit down with these people and resolve it,  
24 because you put them to a heck of a lot of trouble. And you  
25 wouldn't have put them to that much trouble if you had

1 started your discovery a month or two earlier and they could  
2 have done this in a way in which people don't have to work  
3 on weekends and they don't have to be running around at  
4 night simply so that they could get the information to you  
5 to use today. And they did that. And they did that. I  
6 worked with them, and they did that without putting up a  
7 heck of a lot of fuss.

8 MR. HUTTON: Well, Your Honor, we only, after the,  
9 we had a prehearing conference and it was agreed that we  
10 would start the discovery process only on April 3rd, and so,  
11 again, my goal was to try to get the basic underlying facts  
12 and evidence in from Adams --

13 THE COURT: When did you serve them with a  
14 subpoena duces tecum?

15 MR. HUTTON: I think it was around May 10th.

16 THE COURT: Yes. I think it was around May 10th.  
17 That's about what? 40 days after April 3rd? You're not  
18 making your position any better the more you go down this  
19 road.

20 MR. HUTTON: It was shortly after we got the  
21 documents from Adams.

22 THE COURT: I know that, but you knew about this  
23 issue. You knew about this issue. You knew it in its  
24 incubation stages at least back in January. Look, I don't  
25 want to sit here and try to criticize everything that you

1 did. It's the bottom line.

2 The point is that -- I was a witness to this.

3 This firm went through a heck of a lot in the last 10 days

4 to get you what you felt you needed to put your case on, and

5 I went along with it because I think it was important that

6 you get to put your case on. But I could have handled it a

7 lot differently. And now we're at a different juncture.

8 The issue is framed. The briefing has been done.

9 I'm going to get some supplemental things in from

10 Mr. Hays, and I'm going to get a decision out of it. All

11 I'm saying is that I think it would behoove everybody to sit

12 down and talk about this after things cool off in 24 hours.

13 MR. HUTTON: Thank you, Your Honor.

14 THE COURT: All right. Anything else? That's it.

15 Wait a minute. Don't go off the record yet. We're in

16 recess until what time?

17 MR. COLE: 9:30, I have Mr. Kravitz.

18 Mr. Kravitz's lunch break and he'll be available

19 at 9:30.

20 THE COURT: All right.

21 MR. COLE: Then I was planning on doing Mr. Kavel,

22 who has to come in from Fairfax, at 1:30. So we'll do two

23 witnesses tomorrow is my anticipation.

24 THE COURT: You think we can handle Mr. Kravitz in

25 that period of time?

1 MR. COLE: Easily. I anticipate it should be  
2 fairly easy.

3 THE COURT: Everybody else agree with that?

4 MR. SHOOK: Yes. Your Honor, I did have one final  
5 point to make though.

6 THE COURT: All right.

7 MR. SHOOK: It's with respect to Reading Exhibit  
8 52, and meaning no disrespect, but to the extent that Ms.  
9 Swanson did not specifically state what it was any of these  
10 notes were, I would move to strike the remainder, because I  
11 don't want to have to try to figure out, for any purpose,  
12 what it is that these notes are and what they might mean.

13 THE COURT: What do you mean, the remainder? Do  
14 you mean till she --

15 MR. SHOOK: To the extent that there was any line  
16 that she did not indicate what it was that was there. I  
17 mean it's going to take some doing on out part, perhaps, to  
18 go back and figure out what she testified to and what she  
19 didn't, but to the extent she did not testify about a  
20 particular line, I don't want the record to reflect that  
21 this entire exhibit is in for all purposes.

22 MR. HAYS: Your Honor, if I could address that. I  
23 would echo that, because these are attorney notes, and many  
24 of which reflect, although I know Your Honor, or perhaps we  
25 didn't claim attorney-client privilege or necessarily work

1 product with respect to it, they still are attorney, notes  
2 of attorney's thought processes and work and we would echo  
3 Mr. Shook's motion in that regard.

4 THE COURT: Well, I want to address, to be sure  
5 the record is clear on that, that I remember I gave you an  
6 opportunity for review, an in camera on privilege --

7 MR. HAYS: That's correct.

8 THE COURT: And I think you, graciously, but  
9 nonetheless, you did waive the privilege. If there was  
10 anything to waive, you waived it. You just said you weren't  
11 claiming it, so that doesn't mean it was waived, but --

12 MR. HAYS: That's correct, Your Honor. And this  
13 is not, I'm not contending now that these and  
14 attorney-client privilege or that they are work product, in  
15 the traditional sense of the term, but they nonetheless are  
16 confidential in the general sense of it, and rather than  
17 having them splayed all over record, if there's been no  
18 reference to them, then we would submit there's no reason to  
19 put them, to put them out on the record. And if they're,  
20 and they are confidential, in the sense that they're Ms.  
21 Swanson's notes of the thought processes and client  
22 conversations.

23 MR. SOUTHARD: Your Honor, if I may be heard?

24 THE COURT: Yes.

25 MR. SOUTHARD: To the extent that we expect to use



1 specific information, I asked her about it and had it made  
2 clear in the record. If, however, we go back and start  
3 redacting every, any lines that she didn't specifically talk  
4 about, it then ends up taking everything that she did talk  
5 about and putting it out of context. To the extent that any  
6 of the parties' attempt to introduce into the findings of  
7 facts and conclusions at the end, references to material in  
8 the notes which she did not specifically talk about, that  
9 interpretation would be questionable, or could be questioned  
10 by the responding party to that, I guess I would just object  
11 to having only parts of this document placed into the  
12 record.

13 THE COURT: He's talking about the parts, just the  
14 parts that you asked questions on and Ms. Swanson responded  
15 to.

16 MR. SOUTHARD: Yes, I understand that, but you  
17 need, and I don't, I'm not quite sure I understand what Mr.  
18 Shook intends if he's anticipating to go back and to redact  
19 the document with respect to the lines that weren't  
20 specifically read into the record --

21 MR. SHOOK: That is my intention.

22 MR. SOUTHARD: Then you end up losing things like,  
23 for example, if you're on page 12 of Exhibit 52, it  
24 indicates a date of 7/14, and I'm not sure that she  
25 specifically read 7/14 Cole. And again, because of the time

1 issue, I didn't go in and ask her to read every single line.  
2 I just tried to focus her on those areas that I was most  
3 interested in, but you cannot take those specific areas out  
4 of context of the rest of the notes.

5 MR. COLE: Your Honor, it was Mr. Southard's  
6 obligation, if he wanted to cross-examine a witness -- or  
7 examine a witness on direct in connection with an exhibit,  
8 to get whatever testimony he thought was necessary about the  
9 exhibit. If what he's telling you now is that his  
10 examination was somehow inadequate in that regard, that's  
11 not your problem, that's his problem. I agree with Mr.  
12 Shook and Mr. Hays that a physical redaction of the material  
13 not specifically testified to is the appropriate course  
14 here.

15 THE COURT: How would you propose going about  
16 doing this? I guess I should ask the question of Mr. Hays.

17 MR. SHOOK: Your Honor, I'm the proponent of the  
18 motion. I should take responsibility for this. When the  
19 transcript comes out and we have an opportunity to read  
20 through it and see what part of Exhibit 52 was referenced  
21 and what part was not, as a followup to my motion, it would  
22 be my responsibility to go through and mark out and present  
23 to the parties and Your Honor and the court reporter  
24 reformulated, or recast Exhibit 52 that contains only that  
25 information in it which we had testimony on.

1 THE COURT: Well, I'll consider that.

2 MR. SOUTHARD: I would just briefly note that the  
3 notes were themselves already redacted once by Dow, Lohnes  
4 to take out what they believed to be irrelevant information.

5 THE COURT: I realize that. In fact, I even took  
6 them in camera and looked at that also. I mean believe me,  
7 I'm very much a part of this process. All right. If you  
8 want to do it, that's okay. Go ahead and do it.

9 MR. SHOOK: Thank you, Your Honor.

10 THE COURT: Are you going to circulate it with a  
11 motion appropriate pleading, asking that it be substituted  
12 for what's in the record now.

13 MR. SHOOK: Yes sir.

14 THE COURT: Is that right?

15 MR. SHOOK: Yes sir.

16 MR. SOUTHARD: So your ruling is subject to a  
17 further motion.

18 THE COURT: Yes. You're going to have a chance,  
19 certainly.

20 MR. SHOOK: I actually have to put it down on  
21 paper so everybody has a chance to see it.

22 THE COURT: Everybody's got a chance to see it.  
23 That's how we do things around here. And also, you're going  
24 to have the transcript at that point. Because there's no  
25 way that -- anyway, you're going to have the benefit of the

1 transcript, you're going to have the benefit of his  
2 pleadings, you're going to have the benefit of what's in the  
3 record now and you're going to have the benefit of what he  
4 proposes to put in the record, and I'm sure you're going to  
5 have the benefit of all kinds of responsive pleadings from  
6 Mr. Cole and Mr. Hays. So there's going to be a lot to chew  
7 in, but I think he's got a good point, and I think if it can  
8 be done it should be done. The same way as with respect to  
9 pulling out things in this record that don't need to be  
10 there.

11 My other thought on that is, don't worry, Mr.  
12 Hutton, nobody, the FCC is not going to give you a bill for  
13 this. All right? We're in recess until 9:30 tomorrow  
14 morning.

15 (Whereupon, at 5:35 p.m., the hearing in the  
16 above-entitled matter was adjourned.)

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**REPORTER'S CERTIFICATE**

FCC DOCKET NO.: 99-153


CASE TITLE: In Re: READING BROADCAST, Inc.

HEARING DATE: June 20, 2000

LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 6-20-00

  
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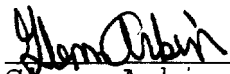
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